

1 **AN ACT** *to create* 767.56 (2h) of the statutes; **relating to:** prohibiting certain
 2 individuals from receiving maintenance where there is evidence of domestic abuse.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft, relating to prohibiting certain individuals from receiving maintenance where there is evidence of domestic abuse, was prepared for the Joint Legislative Council’s Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings.

3 **SECTION 1.** 767.56 (2h) of the statutes is created to read:

4 **767.56 (2h) MAINTENANCE NOT TO BE AWARDED IN CASES OF ABUSE.** The court may not
 5 award maintenance in any case in which the court finds that the party seeking maintenance
 6 has engaged in a pattern or serious incident of interspousal battery, as described under s.
 7 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), against the
 8 prospective payer within 2 years of the date of the filing of any action under this section.

NOTE: Prohibits a court from awarding maintenance in any action under the maintenance statute [s. 767.56, stats.] in which the court finds that the party seeking maintenance has engaged in a pattern of or a serious incident of interspousal battery or domestic abuse against the prospective payer within 2 years of the date of the filing of any actions affecting the family covered by the maintenance statute.

COMMENT: This provision broadly disqualifies those who have committed spousal abuse from receiving maintenance. A more narrow option would disqualify those persons who have a record of conviction for such an offense or had a domestic abuse restraining order entered against them.

Enacting this provision, or any other provision relating to marital fault, would likely have some consequences. First, there would likely be an increase in litigation and litigation resources required, as courts attempt to sort through the evidentiary issues involved with meeting some standard of proof regarding abuse. The committee could consider

specifying a standard of proof in the statute. Narrowing the proposed legislation to apply only to convictions and orders could reduce the increased litigation.

In addition, this provision may run contrary to the charge of the committee to make spousal maintenance decisions more uniform. Two cases with similar factual circumstances, except that the abuse factor is present in only one, could be adjudicated with very different results.

Finally, this provision could: (1) encourage more actions of misconduct and require expenditure of more party resources; and (2) further aggravate what is frequently already a contentious situation.

In conclusion, should the committee decide to pursue this option, consideration should be given to: (1) the standard by which abuse must be proven (ranging from allegation or evidence of abuse to conviction for abuse or entry of a domestic abuse restraining order); and (2) the increased complexity and contentiousness of those actions in which abusive misconduct is claimed.